

APPEAL NO. 031425  
FILED JULY 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 19, 2003. The hearing officer determined that Dr. M is the respondent's (claimant) initial choice of treating doctor; that the employer did not tender a bona fide offer of employment (BFOE) to the claimant; and that the claimant had disability from November 23, 2002, through the date of the CCH. The appellant (carrier) appeals those determinations on sufficiency of the evidence grounds. The claimant responds, urging affirmance.

DECISION

Affirmed, as corrected.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. His left wrist area sustained a deep laceration from a circular saw. He was taken to a nearby hospital, treated briefly, and then taken to a larger hospital where Dr. B, a hand surgeon, operated on his wrist. He saw Dr. B on two subsequent occasions, December 6, 2002, for removal of sutures, and January 6, 2003, for removal of the cast. Dr. B started the claimant on a course of physical therapy. He also released the claimant to return to work with significant restrictions on January 6, 2003, as specified on a Work Status Report (TWCC-73). That same day, the claimant submitted an Employee's Request to Change Treating Doctors (TWCC-53) requesting Dr. S as his treating doctor. The Texas Workers' Compensation Commission (Commission) disapproved the request to change to Dr. S on January 17, 2003. That same day, the claimant submitted an additional TWCC-53 requesting Dr. M. The claimant included in his request the rationale that he wanted to pick his own doctor, that the hospital had put him with Dr. B, and that he had not chosen Dr. B. The Commission approved the request for Dr. M on January 24, 2003. The carrier took the position that Dr. B was the claimant's treating doctor and that the claimant was seeking a change of treating doctor because he wanted a different medical report, and that would be an improper reason for the change. The hearing officer determined that Dr. B was not the claimant's initial choice of treating doctor, based on Texas Workers' Compensation Commission Appeal No. 022176, decided October 7, 2002. Under the circumstances of this case, we agree that Appeal No. 022176 applies and that the hearing officer has correctly and appropriately resolved this issue.

Based upon the release to return to work with restrictions, the employer made the offer of employment that is found in Carrier's Exhibit No. 3, dated January 8, 2003. The hearing officer determined that the offer did not qualify as a BFOE because it did not contain a description of the physical requirements that the offered position would entail. The employer's witness testified that she did not know specifically what the claimant would be doing under the offer that stated that he would be "assisting with

tasks.” The hearing officer further determined that the claimant was unable to obtain or retain employment equivalent to his preinjury wage, mentioning that the offer of light-duty work did not include paying the claimant while he attended physical therapy.

We affirm the hearing officer’s determinations that the offer was not a BFOE and that the claimant had continuing disability. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The offer fails to fully comply with the requirements of Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6). See Texas Workers’ Compensation Commission Appeal No. 010110-s, decided February 28, 2001, and Texas Workers’ Compensation Commission Appeal No. 011878-s, decided September 28, 2001. The hearing officer’s determination that the claimant has had disability as a result of his compensable injury from November 23, 2002, to the date of the CCH, which included the period specifically at issue during this CCH (from January 20, 2003, to the date of the CCH), is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King’s Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We note one matter that needs to be corrected, as noted by the claimant’s attorney. Conclusion of Law No. 4 and the Decision paragraph refer to the date of beginning disability as “November 23, 2003.” We correct those errors so that the dates are correctly stated as “November 23, 2002.”

We affirm the decision and order of the hearing officer, as corrected.

The true corporate name of the insurance carrier is **ST. PAUL MERCURY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge